IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2097 OF 2004

M/s. Transparent Energy Systems Pvt. Ltd. ..Petitioner

Vs.

M/s. Satyawati Chemicals and anr. ..Respondents

Mr. A.P. Mundargi, Senior Counsel i/by Ms. Manisha Patil for the petitioner.

Mr. Sachin Shetye with Mr. T.S. Ingale for respondent no.1.

Mr. D.R. More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 22, 2007.

P.C.:

1. Heard Mr. Mundargi the learned Senior Counsel with Ms. Patil for the petitioner.

2. Rule. Mr. Shetye the learned counsel for the respondent no.1 waives service and the learned APP appears for the State. By consent of the parties the petition is taken up for final hearing forthwith.

3. This petition filed under Article 227 of the

Constitution challenges the order dated 17/9/2003 passed by the learned JMFC at Jaysingpur in Kolhapur District thereby ordering an enquiry by the police under Section 156(3) of Cr.P.C.

4. The present respondent no.1 filed Criminal Case No. 62 of 2003 for the offences punishable under Sections 420, 464, 474, 511, 192, 193, 120-A, 120-B of IPC on or about 17/7/2003. The learned Magistrate invoked his powers under Section 200 of Cr.P.C. on the very same day and recorded the verification of the complainant through its proprietor Lagmanna Kagappa Akiware and after the verification was recorded, he passed the following order on 17/9/2003 i.e. after about two months from the date of verification:-

> "Matter be sent to Jaysingpur Police Station for investigation under provisions of Section 156(3) of Cr.P.C."

5. It is not in dispute that after the impugned order was passed by the learned Magistrate, the police have filed a charge-sheet on or about 22/7/2004 i.e. before this petition was filed on 11/10/2004. Mr.

Shetye the learned counsel for the respondent no.1, therefore, referred to the provisions of Section 460 of Cr.P.c. and submitted that even if the learned Magistrate had erroneously exercised the powers to take cognizance of the offence under Section 190(1) that by itself will not be a reason to set aside the proceedings on the ground that the learned Magistrate was not empowered to do so. There can be no dispute on this point and, therefore, there is no question of quashing the proceedings of the complaint filed by the present respondent no.1 i.e. Criminal Case No.62 of 2003.

6. The challenge of the petitioner is limited to the extent that once the learned Magistrate had invoked his powers under Section 200 of Cr.P.C. and verified the complaint, he was not empowered to go back to Chapter XII of Cr.P.C. and direct a police enquiry under Section 156(3) of Cr.P.C. and in support of these contentions Mr. Mundargi the learned Senior Counsel relied upon a three Judge Bench judgment of the Supreme Court in the case of Devarapalli Lakshminarayana Reddy and ors. vs. V. Narayana Reddy and ors. **[(1976) 3 SCC 252]**. It is

clear that once the Magistrate had invoked his powers to bring into motion the machinery of Chapter XV of Cr.P.C., he cannot go back to bring into motion the machinery of Chapter XII of Cr.P.C. Having recorded the verification under Section 200 of Cr.P.C., if the learned Magistrate was not satisfied with the material available on record was not sufficient to issue process and there was necessity to delay the issuance of process, he could have ordered an enquiry under Section 202 of Cr.P.C. and investigation. This judgment in the case of Devarapalli Reddy does support the case of the present petitioner and that the order passed on 17/9/2003 directing an enquiry under Section 156 (3) of Cr.P.C. by the police is unsustainable in as much as it is illegal and consequently to that extent the petition succeeds.

7. Hence, the petition is partly allowed and the impugned order dated 17/9/2003 is hereby quashed and set aside. However, it is made clear that Criminal Case No. 62 of 2003 will proceed further on the basis of the verification done on 17/7/2003 and it will be open for the learned Magistrate to follow the further procedure as set out under Chapter V of Cr.P.C.

8. Rule is made absolute in terms of the above directions. Trial of the complaint is expedited.

(B.H. Marlapalle,J.)